DOCUMENT RESUME

ED 423 293 TM 029 100

TITLE	Prohibition on Federally Sponsored National Testing. Report Together with Supplemental and Minority Views To Accompany H.R. 2846. House of Representatives, 105th Congress, 2d Session.
INSTITUTION	Congress of the U.S., Washington, DC. House Committee on Education and the Workforce.
REPORT NO	House-R-105-409
PUB DATE	1998-01-30
NOTE	54p.
PUB TYPE	Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	*Achievement Tests; *Educational Finance; Educational Policy; Elementary Secondary Education; *Federal Aid; Federal Government; Federal Legislation; *Financial Support; *National Competency Tests; Standards; *Test Construction; Test Use
IDENTIFIERS	National Assessment of Educational Progress; Third International Mathematics and Science Study

ABSTRACT

H.R. 2846, a bill to prohibit spending Federal education funds on national testing without explicit and specific legislation was referred to the Committee on Education and the Workforce of the U.S. House of Representatives. The Committee, having reviewed the bill, reports favorably on it in this document, proposes some amendments, and recommends that the bill as amended should pass. As introduced, H.R. 2846 amends the General Education Provisions Act and the Fund for Improvement of Education to prohibit Federal funds from being used to develop, plan, or implement (including pilot testing or field testing), or administer any national tests in reading, mathematics, or any other subject unless the test is specifically and explicitly provided for by law. An exception is provided for the Third International Mathematics and Science Study (TIMSS). Because the National Assessment of Educational Progress is specifically and explicitly authorized in the National Education Statistics Act of 1994 it would be unaffected by the legislation. The Committee amends H.R. 2846 to add six findings: (1) that high state and local standards in core academic subjects are essential to elementary and secondary education; (2) state and local control is the hallmark of U.S. education; (3) each of the states already uses numerous tests to measure achievement, and these are based primarily on state and local standards; (4) Public Law 105-78 does require the National Academy of Sciences to study the feasibility of an equivalency scale that would allow comparison of existing tests, and this permits limited test development activity in fourth grade reading and eighth grade mathematics in fiscal year 1998; (5) there is no specific or explicit authority in current Federal law for the proposed federally sponsored national tests in fourth grade reading and eighth grade mathematics; and (6) decisions about national testing will be made through the normal legislative process. Majority and minority Committee member views and supporting information accompanies the report. (SLD)

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105TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
105–409

ED 423 293

PROHIBITION ON FEDERALLY SPONSORED NATIONAL TESTING

JANUARY 30, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOODLING, from the Committee on Education and the Workforce, submitted the following

REPORT

together with

SUPPLEMENTAL AND MINORITY VIEWS

[To accompany H.R. 2846]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 2846) to prohibit spending Federal education funds on national testing without explicit and specific legislation, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. FINDINGS.

The Congress finds the following:

(1) High State and local standards in reading, mathematics, and other core academic subjects are essential to the future well-being of elementary and secondary education in this country.

(2) State and local control of education is the hallmark of education in the United States.

(3) Each of the 50 States already utilizes numerous tests to measure student achievement, including State and commercially available assessments. State assessments are based primarily upon State and locally developed academic standards.

(4) Public Law 105–78, the Labor, Health and Human Services and Education Appropriations Act, 1998, ensures that Federal funds may not be used to field test, pilot test, implement, administer, or distribute in any way, any federally sponsored national test in fiscal year 1998, requires the National Academy of Sciences to conduct a study to determine whether an equivalency scale can be developed that would allow existing tests to be compared one to another, and

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(2) State and local control of education is the hallmark of education in the United States.

(3) Each of the 50 States already utilizes numerous tests to measure student achievement, including State and commercially available assessments. State assessments are based primarily upon State and locally developed academic standards.

(4) Public Law 105–78, the Labor, Health and Human Services and Education Appropriations Act, 1998, ensures that Federal funds may not be used to field test, pilot test, implement, administer, or distribute in any way, any federally sponsored national test in fiscal year 1998, requires the National Academy of Sciences to conduct a study to determine whether an equivalency scale can be developed that would allow existing tests to be compared one to another, and

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permits very limited test development activites in fourth grade reading and eighth grade mathematics in fiscal year 1998.

(5) There is no specific or explicit authority in current Federal law authorizing the proposed federally sponsored national tests in fourth grade reading and eighth grade mathematics.

(6) The decision of whether or not this country implements, administers, disseminates, or otherwise has federally sponsored national tests in fourth grade reading and eighth grade mathematics or any other subject, will be determined primarily through the normal legislative process involving Congress and the respective authorizing committees.

SEC. 2. PROHIBITION ON FEDERALLY SPONSORED TESTING.

Part C of the General Education Provisions Act is amended by adding at the end the following:

"§ 447. Prohibition on federally sponsored testing

"(a) GENERAL PROHIBITION.—Notwithstanding any other provision of Federal law and, except as provided in sections 305 through 311 of Public Law 105–78, the Labor, Health and Human Services and Education Appropriations Act, 1998, funds provided to the Department of Education or to an applicable program under this Act or any other Act, may not be used to develop, plan, implement (including pilot testing or field testing), or administer any federally sponsored national test in reading, mathematics, or any other subject that is not specifically and explicitly provided for in authorizing legislation enacted into law.

"(b) EXCEPTIONS.—Subsection (a) shall not apply to the Third International Math and Science Study or other international comparative assessments developed under authority of section 406(a)(6) of the National Education Statistics Act of 1994, and administered to only a representative sample of pupils in the United States and in foreign nations.".

PURPOSE

The purpose of the bill is to reaffirm that the decision of whether or not to have Federally-sponsored national tests (hereinafter referred to as "Federal tests") rests primarily with Congress and the legislative process.

COMMITTEE ACTION

On April 29, 1997, the Subcommittee on Early Childhood, Youth and Families held a hearing on the President's proposal for Federal voluntary tests in reading in the 4th grade and mathematics in the 8th grade. U.S. Secretary of Education Richard Riley was the sole witness.

On January 21, 1998, the Committee on Education and the Workforce held a field hearing at Frost Middle School in Granada Hills, California on the issue of national testing, with a particular focus upon the Administration's plan for national tests in 4th grade reading and 8th grade mathematics. Ms. Yvonne Larsen, President of the California State Board of Education, testified on the first panel. Witnesses on the second panel included: Mr. Paul Clopton, Cofounder of Mathematically Correct; Ms. Roxanne Petteway, a parent from Walnut, California; Ms. Rebecca Bocchino, a parent from San Clemente, California; and Ms. Teresa Bustillos, a parent and representative of the Mexican American Legal Defense and Education Fund (MALDEF), Los Angeles, California office.

LEGISLATIVE ACTION

On September 16, 1997, the House adopted an amendment, offered by Congressman Bill Goodling (R–PA), to prohibit the spending of any Federal funds under the FY 1998 Labor, Health and

Human Services, and Education and Related Agencies Appropriations bill to develop, plan, implement or administer President Clinton's new Federal tests in 4th grade reading and 8th grade mathematics. The amendment was adopted by a vote of 295 to 125. Subsequent to the vote on this amendment, an agreement was reached on this issue in the appropriations conference on the FY 1998 Labor, Health and Human Services, and Education Appropriations bill. This agreement, contained in the FY 1998 Labor, Health and Human Services, and Education Appropriations Act (P.L. 105–78; enacted November 13, 1997), prohibits any Federal money from being used for field testing, pilot testing, administration or distribution of any new Federal tests in FY 1998.

On November 6, 1997, Rep. Bill Goodling (R–PA), Chairman of the Committee on Education and the Workforce, introduced H.R. 2846, a bill to prohibit Federal testing without explicit and specific legislative authority.

During Full Committee markup on January 28, 1998, an amendment in the nature of a substitute was offered by Mr. Goodling (R–PA) and adopted by a voice vote. Mr. Andrews (D–NJ) moved to postpone consideration of H.R. 2846 and was defeated by a vote of 15 to 23. H.R. 2846 was ordered reported, as amended, out of Full Committee by a vote of 23 to 16.

SUMMARY

SUMMARY OF H.R. 2846 AS INTRODUCED

H. R. 2846 as introduced amends the General Education Provisions Act and the Fund for the Improvement of Education to prohibit Federal funds from being used to develop, plan, implement (including pilot testing or field testing), or administer any national tests in reading, mathematics, or any other subject that is not *specifically and explicitly* provided for in law.

An exception is provided for the Third International Math and Science Study (TIMSS). In addition, because the regular National Assessment of Educational Progress (NAEP) is *specifically and explicitly* authorized in sections 411–413 of the National Education Statistics Act of 1994, it would be unaffected by the legislation.

CHANGES MADE TO H.R. 2846

The Committee substitute amends H.R. 2846 as introduced to add six findings. The findings relate to state and local control of education; state and local assessments; the actions on testing taken under the FY 1998 Labor, HHS, and Education appropriations bill; the lack of *specific and explicit* authority for national testing; and the role of Congress in testing.

The Committee substitute amends only the General Education Provisions Act rather than both the General Education Provisions Act and the Fund for the Improvement of Education. Because the General Education Provisions Act applies to all education programs, no amendment is needed to the Fund for the Improvement of Education.

The Committee substitute continues to prohibit any national testing without *specific and explicit* authority. However, to conform with the FY 1998 appropriations bill, the limited test development

activities that were allowed to go forward only in FY 1998 would be excepted from the prohibition.

The Committee substitute modifies the exception to the prohibition for the TIMSS test to include any future international assessments which are administered to a representative sample of pupils in the United States and foreign nations.

SUMMARY OF COMMITTEE SUBSTITUTE TO H.R. 2846

The Committee substitute to H.R. 2846 amends the General Education Provisions Act to clarify that there can be no Federal tests unless specifically and explicitly provided for in authorizing legislation enacted into law. The bill provides exceptions for: (1) limited test development activities pursuant to P. L. 105–78 and only in fiscal year 1998; and, (2) the Third International Math and Science Study (TIMSS) or comparable international assessments administered to representative samples of students pursuant to section 406(a)(6) of the National Education Statistics Act of 1994. The National Assessment of Educational Progress (NAEP), which is currently *specifically and explicitly* authorized in sections 411–413 of the National Education Statistics Act of 1994, would be unaffected by the legislation. Finally, H.R. 2846 is not inconsistent with the actions of Congress taken on Federal testing in sections 305–311 of P. L. 105–78, the FY 1998 Labor, Health and Human Services, and Education Appropriations Act.

COMMITTEE VIEWS

FEDERAL TESTING—BACKGROUND AND GENERAL DISCUSSION

Beginning with the first announcement of proposed Federal tests on February 4, 1997 and up until enactment of Public Law 105–78, the FY 1998 Labor, Health and Human Services, and Education Appropriations Act, the Clinton Administration and the Department of Education had sought to unilaterally and expeditiously develop and implement Federal tests in 4th grade reading and 8th grade mathematics without the participation of the Congress. The Federal testing effort was one which had, for several months, effectively bypassed Congress and the normal legislative process. Congress had no role in the proposed testing effort, nor did the outside community—except for the Department's hand-picked participants. The negative effects of the unilateral and expeditious actions of the Department have recently become known to the Committee. At its January 22, 1998 board meeting, the National Assessment Governing Board (NAGB), which oversees the National Assessment of Educational Progress (NAEP), recently reviewed the Department's test development contract, and found it wanting. NAGB rejected several parts of the contract. They found flaws in the Department's timetable, the test specifications developed by the Department, the Department's plans for the frequency of calculator use, and several other technical shortcomings.

With enactment of the P. L. 105–78, the FY 1998 Labor, Health and Human Services, and Education and Related Agencies appropriations bill, any attempts at pilot testing, field testing, implementation or administration of Federal tests were stopped in FY 1998. This prohibition allowed Congress to bring its views to bear upon

what the testing policy of this country should be. The prohibition gave the authorizing committees (Committee on Education and the Workforce in the House of Representatives and Committee on Labor and Human Resources in the Senate) time to determine what, if any, consensus there might be in Congress on Federal testing. The Committee on Education and the Workforce has already begun to hold hearings and gather information on this matter. It will continue with several hearings and public debate on Federal testing during the reauthorization of the National Assessment of Educational Progress (NAEP) and the National Assessment Governing Board (NAGB) in 1998.

During calendar year 1997 and subsequent to enactment of the appropriations law for FY 1998, the Clinton Administration has expressed its view that its proposed Federal tests are already authorized in Federal law and that pilot testing and field testing will automatically go forward in the fall of 1998 with the beginning of a new fiscal year. At the November 13, 1997 signing ceremony for the FY 1998 Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, President Clinton stated "* * * This bill represents a genuine breakthrough in what is now quite a long effort by many people to achieve national academic standards in the United States * * * and for the very first time, Congress has voted to support the development of voluntary national tests to measure performance in 4th grade reading and 8th grade math. The tests will be created by an independent, bipartisan organization and will be piloted in schools next October [1998]."

The Committee believes that no Federal testing of any kind (whether development, pilot testing, field testing, implementation or administration) should go forward, without *specific and explicit* legislative authority having been granted by Congress. No such *specific and explicit* authority for the proposed Federal tests in 4th grade reading and 8th grade mathematics currently exists, except for the limited test development activities allowed under the FY 1998 Labor, Health and Human Services and Education and Related Agencies Appropriations Act. This preserves the normal legislative process and the proper role of Congress in setting education policy. For the Committee to stand by idly would be to ignore the Committee's duties and responsibilities in education, particularly on an issue of such magnitude as Federal testing.

THE QUESTION OF EXISTING LEGISLATIVE AUTHORITY FOR FEDERAL TESTING

Shortly after the President announced his proposal for Federal tests in 4th grade reading and 8th grade mathematics in February 1997, Rep. Bill Goodling (R–PA), Chairman of the Committee on Education and the Workforce; Rep. Frank Riggs (R–CA), Chairman of the Subcommittee on Early Childhood, Youth and Families; Rep. Peter Hoekstra (R–MI), Chairman of the Subcommittee on Oversight and Investigations and Rep. John Porter (R–IL), Chairman of the Subcommittee on Labor, Health and Human Services, Education and Related Agencies of the Committee on Appropriations sent a joint letter (included in this report as Exhibit A) to the Honorable Richard W. Riley, Secretary of the Department of Education,

on the President's testing proposal. The letter noted the signatories' concerns that State and local communities and parents need objective information to determine how students are performing academically. The letter also stated the President's testing proposal constituted a major change in Federal education policy, that Congress should receive clear information on the Administration's intentions and such far-reaching proposals need to be backed by a consensus in Congress. Attached to the letter was a list of 27 questions for which the Members sought answers. Two of the questions related directly to purported legislative authority for the Department to unilaterally develop and implement the Federal tests. The questions were:

> Do you intend to seek *explicit* Congressional authority and approval for the development and implementation of the national tests, similar to the *explicit* statutory authority Congress gave for the National Assessment of Educational Progress (NAEP)?
>
> If you believe authority already exists under current law for the development and administration of the national tests, under what specific statutory authorizations does such authority exist? Include specific U.S. Code title and subsections.

On March 19, 1997, Acting Deputy Secretary of Education, Marshall S. Smith, responded in writing to the letter (included in this report as Exhibit B). The letter included the following question/answer responses:

> *Question:* Do you intend to seek *explicit* Congressional authority and approval for the development and implementation of the national tests, similar to the *explicit* statutory authority Congress gave for the National Assessment of Educational Progress (NAEP)?
>
> Answer: We do not believe that additional authorizing legislation is necessary for us to develop these tests and make them available for use by States and districts. Under our plan, we will need additional funds in 1999 to reimburse States, districts, or other entities such as test publishers, for the costs of administering the tests in the first year, and we may need funds for test administration in subsequent years as well. We look forward to working with the Committees to gain approval of appropriations for this purpose.
>
> *Question:* If you believe authority already exists under current law for the development and administration of the national tests, under what specific statutory authorizations does such authority exist? Include specific U.S. Code title and subsections.
>
> Answer: We believe that authority exists under the Fund for the Improvement of Education authorized by Title X, Section 10101 of the Elementary and Secondary Education Act (20 USC 8001).

While the Department claims to have authority for Federal testing under the Fund for the Improvement of Education (FIE) (20

USC 8001), a review of the legislative history of the statute casts substantial doubt upon that argument. First, the predecessor statute to FIE—called the Secretary's Fund for Innovation in Education—*specifically and explicitly* provided for "Optional Tests of Academic Excellence" in section 4602 of Public Law 100–297. However, that testing language was purposely deleted from Federal law in the Improving America's Schools Act of 1994 (Public Law 103–382). A conscious decision was made to take away the Secretary's authority for Federal testing. Clearly, the intent of Congress was that there should be no Federal testing under the FIE statute. Despite this clear intent, the Administration sought to move ahead, unilaterally, in 1997 to put their Federal tests on the fast-track with plans to pilot test in early 1998, and fully implement the tests in March 1999.

It is clear that there is no current *explicit and specific* authority for Federal tests in 4th grade reading and 8th grade mathematics under FIE. At best, the Secretary has broad authority under the law to use FIE funding "to support nationally significant programs and projects to improve the quality of education, assist all students to meet challenging *State* content standards and challenging *State* student performance standards, and contribute to achievement of the National Education Goals * * *" and for the "development and evaluation of model *strategies* for—(I) assessment of student learning * * *" 20 USC 8001(a), 20 USC 8001(b)(1)(A)(ii). A reasonable and ordinary reading of this latter language would imply the development and evaluation of *strategies* (i.e. a planning process without anything further). It is the Committee's view that *strategies* does not include the development of specific Federal tests, the signing of test development contracts, the development of test questions, or the widespread promotion of Federal tests to States and school districts across the country such as has been done by the Clinton Administration.

The Committee also notes that the existing National Assessment of Educational Progress (NAEP) (Sections 411–413 of the National Education Statistics Act), also known as the "Nation's Report Card," consists of random sample testing of 4th, 8th, and 12th graders in several subject matter areas, and is *explicitly and specifically* provided for in statute. The statute provides for the establishment of a governing board for the tests; sets forth the random sampling technique for the tests; sets forth a clear purpose for the tests; tells how the tests are to be conducted; tells how and under what circumstances test results are made available in the aggregate; sets forth performance levels; sets forth reporting requirements; sets forth confidentiality protections; and many other related provisions.

By contrast, there are no such *explicit and specific* provisions in law authorizing the President's tests. In addition, the Committee is aware that the current version of NAEP, as amended in 1994, came about through a consensus process, involving multiple hearings over a two year period. By contrast, the President and the Department of Education sought, unilaterally, to move from announcing the tests in February 1997, to signing a $13 million test development contract in August 1997, to pilot/field testing in the spring of 1998, and to implementation in March 1999. The negative effects

of such unilateral and expeditious actions of the Department have just recently become known to the Committee. At its January 22, 1998 board meeting, the National Assessment Governing Board (NAGB), which oversees the National Assessment of Educational Progress (NAEP), recently reviewed the Department's test development contract, and found it wanting. NAGB rejected several parts of the contract. They found flaws in the Department's timetable, the test specifications developed by the Department, the Department's plans for the frequency of calculator use, and several other technical shortcomings.

With enactment of Public Law 105–78, the Labor, Health and Human Services, and Education and Related Agencies Appropriations Act for FY 1998, the pilot/field testing was prohibited in FY 1998, as well as any dissemination or implementation activities. Again, the Committee believes, particularly for something of the magnitude of Federal testing, that the normal legislative process should be followed, much like occurred with NAEP. This bill, H.R. 2846, will help ensure the normal legislative process is followed, by requiring *specific and explicit* authority for any new Federal testing to occur.

The Committee notes, however, that it did receive a short two section, one-page bill from the Secretary of Education in early September 1997, well over six months after the test proposal was first announced. That bill gave broad authority to the National Assessment Governing Board (NAGB) to formulate policy for new Federal tests in reading and mathematics, rather than the Department of Education and its hand-picked advisors. The Administration's bill can hardly be said to grant *explicit and specific* authority for Federal tests. It skips over the issue of authority and jumps to policy. That bill presupposed that authority for the testing already existed; it did not.

The Committee strongly believes the proper forum for addressing the President's Federal testing proposal is during reauthorization hearings on NAEP and NAGB. These hearings are scheduled for the first half of 1998. Both supporters and opponents of Federal testing will have an opportunity to advance their views and shape any legislation that might emerge from the Committee. However, to ensure that Congress's role in education policy is respected, H.R. 2846, provides that there will be no further Federal testing activity unless *specifically and explicitly* provided for in law. Exceptions are provided for the limited test development activities that were permitted in the FY 1998 Labor, HHS, and Education Appropriations Act (P. L. 105–78), and for the Third International Math and Science Study (TIMSS) and similar international assessments involving sampling of students. The National Assessment of Educational Progress, which is currently *specifically and explicitly* authorized, is unaffected by H.R. 2846.

OTHER DEPARTMENT OF EDUCATION ACTIVITIES

The Committee has also been concerned about a number of other Department of Education activities in 1997 that gave the appearance of a continued, unilateral effort to push its Federal testing agenda upon the American people, all without Congressional approval or involvement. Those activities are as follows:

(1) *September 16, 1997 Title I Memo to Chief State School Officers.* The Committee has been made aware of a September 16, 1997 memorandum (included in this report as Exhibit C) from Assistant Secretary Gerald Tirozzi to the Chief State School Officers in each state which says that the new Federal tests can be used for Title I assessments. The following language was included in the memo:

Question. May the national tests be used by the States, in part, as the assessments required under Title I of the Elementary and Secondary Education Act?

Answer. Yes. Title I requires a State to use challenging content and student performance standards developed for all students under the Goals 2000: Educate America Act or under another process or, absent such standards for all students, to develop for children served under Title I challenging content and student performance standards that reflect the State's expectations for all children. The State must also develop or adopt assessments aligned with these standards. Thus, if a State determines that the national tests are aligned with the State's standards, those tests may be used for Title I purposes * * *

Question. Will use of the national tests by a State fully meet its assessment obligations under Title I?

Answer. For most children, use of the national tests will meet a State's obligations under Title I to assess performance in reading at the fourth grade level and in math at the eighth grade level * * *

(2) *Four Seasons Hotel.* On September 22–23, 1997, under the auspices of the Department of Education and its agents, a meeting of the voluntary national tests advisory panels was convened at the Four Seasons Hotel in Washington, DC, costing taxpayers approximately $13,654 for meals, rooms and conference space; $7,600 for transcription services; $7,350 for stipends to panelists; and approximately $10,000 in transportation costs. The Committee is aware that this meeting occurred a full six days after the House overwhelmingly expressed its opposition to national testing by a vote of 295–125 on the Goodling testing amendment to the FY 1998 Labor, Health and Human Services and Education Appropriations bill. Copies of relevant correspondence are included in this report as Exhibits D and E.

(3) *October 1997 Secretary of Education's Letter to School Board Chairs.* The Committee has been made aware of an October 1997 letter from the Secretary of Education to local school board chairs which promotes the President's Federal tests in 8th grade mathematics. The letter (included in this report as Exhibit F), states in part,

In 1999, your district has the opportunity to participate in a voluntary national test of mathematics at grade eight that will provide individual student scores, and will be linked to the National Assessment of Educational Progress (NAEP) and Third International Math and Science Study (TIMSS). Participating in this mathematics test will tell

you how your students are doing compared to students in other states and other nations. There will also be a voluntary national test in reading at grade four—another critical subject * * * We encourage you in your stewardship of your local schools, to share this information with members of your board, and take this opportunity to begin a dialogue with your superintendent, principals, teachers, parents, and others who are concerned about improving our students' achievement.

NATIONAL ASSESSMENT GOVERNING BOARD ACTIVITIES (NAGB)

Pursuant to the FY 1998 Labor, Health and Human Services, and Education Appropriations Act, the National Assessment Governing Board (NAGB) was given exclusive authority over all policies, direction and guidelines for voluntary national tests pursuant to contract #RJ97153001 between the Department of Education and the American Institutes of Research. NAGB was also required to review the contract and accept, modify, or terminate it within 90 days. As part of that process NAGB convened a Special Committee to Review the Test Development Contract, chaired by William T. Randall. The Special Committee, through its Chairman, prepared a January 15, 1998 memorandum to the full membership of NAGB (included as Exhibit G) reporting on its work.

While the Committee is pleased with the expertise of NAGB and the professionalism it has shown in its review of the contract, the Committee is concerned with statements in the memorandum that indicate the first pilot test will be "conducted in March of 1999, the field test in March of the year 2000, and the operational test in March of the year 2001." Such a statement appears to presume or conclude that there will automatically be pilot testing and field testing in 1999. The Committee finds this to be an inappropriate presumption or conclusion in light of Congress not having yet addressed, what, if anything will be permitted on national testing in 1999. The same analysis applies to the implementation in March of 2001. Again, Congress has not addressed what, if anything, will be permitted on national testing in 2001. What is clear is that Congress has never affirmatively approved pilot testing, field testing or implementation of the Administration's national tests.

WHY IS THE COMMITTEE MARKING-UP H.R. 2846 AT THIS TIME?

The Committee is concerned about the recent misperceptions that this Administration and others have that pilot testing, field testing, and implementation of Federal testing will be permitted to go forward starting on October 1, 1998, which is the beginning date of fiscal year 1999. The Committee believes it is important to quickly clear-up these misperceptions and state unequivocally that no Federal testing goes forward without *specific and explicit* legislative authority. Included below are reasons why it has become necessary to mark-up H.R. 2846:

The FY 1998 Labor, Health and Human Services, and Education Appropriations Act (PL 105–78)—which the President signed into law on November 13, 1997—*was supposed* to be an agreement to stop this Administration from going forward with

administering Federal tests prior to any Congressional action or public input.

Yet, at the bill signing ceremony on November 13, 1997 for the Labor, HHS and Education Appropriations bill, the President stated:

> * * * This bill represents a genuine breakthrough in what is now quite a long effort by many people to achieve national academic standards in the United States.
>
> * * * And for the very first time, Congress has voted to support the development of voluntary national tests to measure performance in 4th grade reading and 8th grade math. The tests will be created by an independent, bipartisan organization and will be piloted in schools next October.

Further evidence that the President and his Administration are seeking to circumvent the legislative process can be found on the Department of Education's web site. The page states: "The bill [PL 105–78] provides full funding to proceed with immediate development of the first-ever *voluntary national tests* in 4th grade reading and 8th grade math * * * The bill permits pilot testing to begin in Fall 1998."

More detailed information about testing provided on the Department of Education's web site (updated after the President signed the Appropriations bill) notes: "The first pilot tests are scheduled for the fall of 1998 and the field tests in the spring of 1999. The voluntary national tests will first be officially administered in the spring of 2000."

In a December 2, 1997 press release, Mark Musick, chairman of the National Assessment Governing Board (NAGB), stated: "We will carry out the job Congress has asked us to do—develop an individualized version of the National Assessment of Educational Progress." The NAGB press release went on further to state: "The Board will seek to complete all preliminary development work by September 30, 1998, so there can be pilot testing and field testing later."

Secretary of Education Dick Riley sent a letter to the Chairman of the Education and Workforce Committee, Rep. Bill Goodling (R–PA) on January 20, 1998 asking him to reconsider this markup. He noted the Chairman's involvement in reaching a bipartisan agreement under the FY 1998 Labor, Health and Human Services, and Education Appropriations Act on how to proceed with regard to Federal tests including the transfer of responsibilities to NAGB and the deadlines established for studies by the National Academy of Sciences. This agreement did *not* include language authorizing pilot testing, field testing or implementation of tests in FY 1999, as the Administration has asserted will occur.

As earlier mentioned, a January 15, 1998 memo from William Randall, Chairman of the Special Committee to Review the Test Development Contract, to members of NAGB states the first pilot test will be "conducted in March of 1999, the field test in March of the year 2000, and the operational test in March of the year 2001." NAGB clearly views its role as lay-

ing the foundation for pilot testing and other activities soon after the September 30, 1998 expiration date for the ban of pilot testing in the FY 1998 Labor, Health and Human Services and Education Appropriations Act.

To NAGB's credit, they determined that the Administration's plans and ill-conceived timetable for Federal tests were so flawed that NAGB decided to re-write the test development contract. It is clear the test specifications were developed in a rush so as to be administered prior to the end of the President's second term. Again, this shows that the Department of Education's original work was done in a very haphazard manner, and provides even more reason for Congress to prohibit Federal testing without *specific and explicit* authority.

CONCLUSION

The actions of the President and the Department of Education in calendar year 1997, and pronouncements by Administration officials subsequent to the enactment of the FY 1998 Labor, Health and Human Services and Education Appropriations Act (P.L. 105–78), continue to indicate the Administration's plans to move forward with Federal testing. H.R. 2846 ensures that Federal testing activity does not go forward unless *specific and explicit* authority is provided in law. This legislation preserves the proper and appropriate role of Congress by prohibiting all Federal testing activity unless *specifically and explicitly* authorized by Congress.

EXHIBIT A

HOUSE OF REPRESENTATIVES,
COMMITTEE ON EDUCATION AND THE WORKFORCE,
Washington, DC, March 5, 1997.

Hon. RICHARD W. RILEY,
Secretary, Department of Education,
Washington, DC.

DEAR SECRETARY RILEY: We are pleased to know of President Clinton's commitment to improving the education of all students, just as we are. Likewise, we agree with the Administration that states and communities need objective information, often in the form of statewide systems of standards and assessments, about how students are doing. This information can help provide a needed spark for education for education improvement.

In this light, we will review the Administration's proposals on standards and assessments. However, other than a few brief mentions in budget documents and other Departmental public relations materials, our Committee has yet to receive any official guidance on the Administration's plans in this area.

From what we ascertain, the President's national testing proposal in reading and math constitutes a major change in Federal education policy. Given this change, we believe Congress should have clear information on the Administration's intentions, and that your proposal receive the careful scrutiny it deserves—both by Congress and the public at-

large. In our view, proposals like this must be backed by a consensus on the Hill and in the country if they are to achieve success when implemented.

We are particularly interested in knowing the explicit statutory authority on which the Administration relies for the testing. It is also important that we know what specific category of funds the Administration intends to allocate for the tests. We would appreciate your assistance in clarifying these two issues, as well as in answering several questions that are included in the attached document. The answers to these questions will assist us in giving the Administration's proposal the careful consideration it deserves.

In our view, this is a serious proposal that deserves serious debate and consideration. Tests, whether national or state, are but a measure of progress. While testing does provide a measure of progress, we believe national education policy should give priority to the things that we know work—helping children master the basic academic subjects, engaging and involving parents, and getting dollars to the classroom where they can do the most good. These are our top priorities, and we look forward to working with you on these issues, as well as on your standards and testing proposal.

We would appreciate receiving the responses to the questions no later than March 19, 1997. Thank you in advance for your assistance. We look forward to hearing from you.

Sincerely,

BILL GOODLING,
Chairman, Committee on Education and the Workforce.
PETER HOEKSTRA,
Chairman, Subcommittee on Oversight and Investigations.
FRANK RIGGS,
Chairman, Subcommittee on Early Childhood, Youth and Families.
JOHN PORTER,
Chairman, Subcommittee on Labor, Health and Human Services, Education and Related Agencies of the Committee on Appropriations.

1. Why did the Department not include a specific written budget request for the proposal in the Department of Education budget documents that were submitted to Congress earlier this year?

2. What does the President perceive to be the difference between "federal government standards" and "national standards"?

3. Do you intend to seek *explicit* Congressional authority and approval for the development and implementation of the national tests, similar to the *explicit* statutory authority Congress gave for the National Assessment of Educational Progress (NAEP)?

4. If you believe authority already exists under current law for the development and implementation of the national tests, under what specific statutory authorization does such authority exist? Include specific U.S. Code titles and subsections.

5. Under what specific program's appropriation does the President propose to pay for the development and implementation of the new national tests? What, if any funds, do you intend to reprogram in FY 1997 or FY 1998 for the national tests?

6. (a) What do you expect will be the total cost of development of these tests and on what basis do you make the estimate?

(b) What do you expect will be the total costs per student and on what basis do you make the estimate?

(c) What portion of the costs will be borne by the federal budget during the development phase and what portion will be borne by states and school districts?

(d) What portion of the costs will be borne by the federal budget during the first administration of the tests?

(e) What portion of the costs will be borne by the federal budget in the years following the first administration of the tests?

7. (a) What is the specific timetable for the development of these tests?

(b) What is the specific timetable for including any "requests for proposals", grants, or contracts?

(c) What is the specific timetable for the meeting of advisory committees on this issue, if any?

(d) What is the specific timetable for any other stages in the process or activities associated with the process not mentioned in (a)–(c) above?

8. (a) Do you plan to use actual NAEP tests (i.e. those used for the national and state assessments) for the individualized tests you propose or do you intend to create new test instruments?

(b) If the latter, what specifically will be their relationship to NAEP?

(c) How do you know their results will be comparable?

9. (a) If you are proposing to engage outside organizations in the preparation and conduct of these tests, such as through grants or contracts to non-federal entities, which specific ones do you propose to use?

(b) How will the grantees or contract recipients be selected and by whom?

(c) If by officials of the Department of Education, name those officials.

(d) If by "peer review", please name the federal officials who will select the reviewers and the types and qualifications of reviewers to be used.

10. (a) What specifically, if any, is to be the relationship of the National Assessment Governing Board (NAGB) to the proposed new tests?

(b) It has been reported that you may have decided that these tests, although based in some way on NAEP frameworks and NAGB standards, will be created and managed outside the existing NAEP administrative and policy structures. Please explain.

11. (a) Do you plan to use the NAGB "proficient" standard, or the "basic" standard as the fundamental "national standard"?

(b) If the latter, how do you justify changing from the standard that both NAGB and the National Education Goals Panel have adopted as the level of achievement that all young Americans should be expected to reach?

12. How will you assure that use of these tests will be, and remain, voluntary and not become mandatory tests?

13. (a) Will it be possible for states and communities to "embed" or integrate the national tests in their own state and local testing programs?

(b) How exactly will this be done?

14. (a) Please explain in detail the "standards" in the Third International Mathematics and Science Study (TIMSS) that, in your view, qualify TIMSS to be the proper basis for the eighth grade math test?

(b) How do TIMSS standards differ, if at all, from NAEP standards?

(c) If the President's plan for testing moves forward, does it not make more sense to use eighth NAEP standards and tests for math? Why or why not?

15. (a) Why have you decided to limit this program to fourth grade reading and eighth grade math?

(b) How do you plan to deal with states, that might prefer, for example, to use NAEP instruments for fourth grade math and eighth grade reading? Or science?

16. Will the reading test be given only in English or in other languages as well?

17. What accommodations, if any, do you intend to make for students with disabilities who take these tests?

18. (a) In what form do you expect the test results to be made available to parents?

(b) How will the confidentiality of individual test-takers be protected?

(c) Will parents be able to obtain school-specific data?

(d) Will parents be able to obtain school-specific data for schools other than the one(s) their own child or children attend?

19. (a) Do you intend to create new advisory committees to help design and oversee this program? If so, please explain.

(b) If so, why are you doing that rather than relying on NAGB?

(c) Who will appoint these new committees?

(d) What types of individuals will be appointed?

(e) How many individuals will be appointed to such committees?

(f) What criteria do you intend to use for such appointees?

20. How do you plan to deal with states which may have state assessments and standards which are more rigorous than any new national tests or standards?

21. Will states that wish to do so be free to use these test results for "high stakes" purposes?

22. What is the relationship of the new tests to the state standards and state assessments aspects of goals 2000?

23. (a) At least 32 states have developed state standards, and an additional 14 report that standards development is underway. In addition, 45 states report that they have statewide assessment systems. How will "national standards" affect states who have already developed and are using state standards?

(b) If the national standards are different from the states standards, will the states have to change their standards?

24. What provision, if any, does the President's proposal make for private and home-schooled students to be able to take these tests?

25. How will you ensure test security?

26. Will states be permitted to require teachers to take the same tests that their pupils are taking?

27. If a state decides not to use the national tests in reading and math, can a local educational agency still go forward and use the test?

EXHIBIT B

U.S. DEPARTMENT OF EDUCATION,
Washington, DC, March 19, 1997.

Hon. BILL GOODLING,
Chairman, Committee on Education and the Workforce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter to the Secretary requesting more information about the President's plan to develop voluntary national tests for individual students in fourth grade reading in English and eighth grade mathematics. I am sending identical replies to Congressmen Hoekstra, Riggs, and Porter.

Our plan is to make these tests available for use by States and school districts in the spring of 1999. They will offer a common set of expectations and standards in the

basic skills of reading and mathematics, and allow every parent to compare the performance of his or her child with the performance of children around the country and the world.

In these two basic skills areas—of fourth grade reading and eighth grade mathematics—there is little disagreement about what children should know and be able to do. Children need to be able to read independently and well by the fourth grade, or they will be unable to read to learn other subjects. They also need a strong background in challenging mathematics by the eighth grade, or they will be unable to take the rigorous courses in high school that prepare them for college. All children must be provided the challenging curriculum and quality teaching that enables them to achieve these basic skills. The voluntary national tests will be a strong force for making that happen.

We plan to develop these tests under the authority provided by the Fund for the Improvement of Education, using monies made available for that program under the appropriation for Education Research, Statistics, and Improvement. Enclosed with this letter are responses to the questions you posed regarding the details of our plan.

We appreciate your careful consideration of this initiative. We look forward to working with you on the various issues as we proceed.

Sincerely,

MARSHALL S. SMITH,
Acting Deputy Secretary.

Enclosure.

QUESTIONS REGRADING NATIONAL TESTS IN FOURTH GRADE READING IN ENGLISH AND EIGHTH GRADE MATHEMATICS

1. *Question.* Why did the Department not include a specific written budget request for the proposal in the Department of Education budget documents that were submitted to Congress earlier this year?

Answer. The President made the decision to develop voluntary national tests in fourth grade reading and eighth grade mathematics following his return from a trip to Northbrook, Illinois, on January 22, 1997. During that trip, the President participated in the release of results comparing the mathematics and science performance of students in the districts comprising the First in the World Consortium with the performance of students in the 41 countries that participated in the Third International Mathematics and Science Study (TIMSS). We had already sent our budget documents to print by that time so that we would be able to deliver them to the Appropriations Committees on the day that the President released his fiscal year 1998 budget.

2. *Question.* What does the President perceive to be the difference between "federal government standards" and "national standards?"

Answer. Federal Government standards would be standards somehow imposed or required by the Federal Government. The President and the Secretary are opposed to developing such standards. National standards are voluntary standards that are developed through a consensus process and widely accepted as representing what students should know and be able to do. They are developed by groups of individuals outside of government such as the National Council of Teachers of Mathematics and the National Assessment Governing Board. The standards embodied in the National Assessment of Educational Progress are an example of national standards. The national tests will be based on these standards.

3. *Question.* Do you intend to seek *explicit* Congressional authority and approval for the development and implementation of the national tests, similar to the *explicit* statutory authority Congress gave for the National Assessment of Educational Progress (NAEP)?

Answer. We do not believe that additional authorizing legislation is necessary for us to develop these tests and make them available for use by States and districts. Under our plan, we will need additional funds in 1999 to reimburse States, districts, or other entities such as test publishers, for the costs of administering the tests in the first year, and we may need funds for test administration in subsequent years as well. We look forward to working with the Committees to gain approval of appropriations for this purpose.

4. *Question.* If you believe authority already exists under current law for the development and administration of the national tests, under what specific statutory authorization does such authority exist? Include specific U.S. Code titles and subsections.

Answer. We believe that authority exists under the Fund for the Improvement of Education authorized by Title X, Section 10101 of the Elementary and Secondary Education Act (20 USC 8001).

5. *Question.* Under what specific program's appropriation does the President propose to pay for the development and implementation of the new national tests? What, if any, funds do you intend to reprogram in FY 1997 or FY 1998 for the national tests?

Answer. We will use funds made available for the Fund for the Improvement of Education (FIE) in the appropriation for Education Research, Statistics, and Improvement to develop these tests. We expect to use up to $10 million in FIE funds for this purpose in 1997 and up to $12 million in 1998. Because we are using funds originally made available for the program under whose authority we intend to carry out this activity, we do not believe that reprogramming is needed.

Funds will not be needed for the implementation (or administration) of these tests until 1999 when they first become available for use by States and districts. Our 1999

budget for FIE will include funds to reimburse States and districts, or other entities, such as test publishers, that administer the tests, for the costs of administering the tests in the spring of 1999. These administration costs will include the costs of printing the tests, scoring the tests, analyzing the results, and reporting the results to parents and teachers.

6.(a) *Question.* What do you expect will be the total cost of development of these tests and on what basis do you make the estimate?

Answer. We intend to make available new versions of the national tests each year. We estimate that annual development costs will be approximately $10–12 million, with inflation increasing costs slowly over time. Our estimate is based on the Department's experience with NAEP and on the experience of State assessment programs.

These tests will be based on the test frameworks used to develop the NAEP fourth grade reading and eighth grade mathematics assessments. The tests will be linked to the NAEP tests and, in the case of mathematics, also to the eighth grade mathematics test used in TIMSS. This will permit parents and teachers to compare the performance of individual students with the performance of their peers around the country and the world. It also means that the costs of developing the national tests will be low compared to other tests because the test frameworks and performance levels that will be used have already been developed for NAEP and TIMSS.

6.(b) *Question.* What do you expect will be the total costs per student and on what basis do you make the estimate?

Answer. We are still refining our estimates of per student costs. We are not including in these estimates any of the costs related to the development of the tests, as the development costs will be paid directly by the Department to the contractors competitively selected to develop the tests. The per student costs are essentially the costs of administering and scoring the tests and reporting the results, and they will be the basis of our fiscal year 1999 request for funds to reimburse States, districts, and others for administration of the tests. Based on input we received in the course of three public meetings, primarily from State assessment directors, our current estimates are that administration costs will be between $10 and $12 per student. These estimates may change as issues arise in the test development process.

6.(c) *Question.* What portion of the costs will be borne by the federal budget during the development phase and what portion will be borne by states and school districts?

Answer. We intend to include in our budget each year the costs of developing a fourth grade reading test and an eighth grade mathematics test. New versions of the tests will be made available each year, beginning in 1999. We do not intend to pass the costs of development on to States and school districts.

6.(d) *Question.* What portion of the costs will be borne by the federal budget during the first administration of the tests?

Answer. We intend to provide reimbursement for the costs incurred in administering the national tests in the spring of 1999, the first year they will be available. Our 1999 budget will include funds for this reimbursement. The budget will also include funds for test development, as contractors will be developing and field testing versions of the tests to be used in subsequent years.

6.(e) *Question.* What portion of the costs will be borne by the federal budget in the years following the first administration of the tests?

Answer. We are not certain about this at the present time. We will continue to bear the costs of developing versions of the tests for use in subsequent years. We may also request funds to reimburse States, school districts, and other eligible entities for costs of administering the tests for additional years beyond 1999, but no final decision has been made yet on this point.

7.(a) *Question.* What is the specific timetable for the development of these tests?

Answer. We intend to have the first fourth grade reading test and the first eighth grade mathematics test available for use in the spring of 1999. This means that the tests will have to be field tested in the spring of 1998. In order for this to occur, development contracts must be in place no later than September of this year.

7.(b) *Question.* What is the specific timetable for including any "requests for proposals," grants, or contracts?

Answer. We intend to issue a request for proposals by late April for two test development contracts, one for fourth grade reading and the other for eighth grade mathematics, with the contracts to be awarded by August or September. The draft scope of work for these contracts will be made available on the World Wide Web, probably during the week of March 17, with an invitation for public comment.

We are exploring the possibility of having the technical specifications for the tests and for the test items developed under a separate award so that the specifications will be available for the test developers to begin work in August or September. The specifications will be based on the test frameworks already developed for the National Assessment of Educational Progress.

7.(c) *Question.* What is the specific timetable for the meeting of advisory committees on this issue, if any?

Answer. The test development contractors will be required to establish certain advisory panels, but we do not presently have a firm timetable for the meetings of those groups. Our current thinking is that meetings should probably be held shortly after the award of the contracts in 1997 and in March and September of each subsequent

year. The request for proposals will outline the specific timetable.

We have no schedule at this time for meetings of any other advisory committee(s) that might be established to provide advice on the tests. We have had a meeting with experts for input, and we have had a series of three public meetings at which we heard from test publishers, State assessment directors, and others. The transcripts of all of these meetings are being made available on the World Wide Web. The meetings have been very helpful. Other such meetings may occur.

7.(d) *Question.* What is the specific timetable for any other stages in the process or activities associated with the process not mentioned in (a)–(c) above?

Answer. The request for proposals will outline the stages of the test development process. It may contain a specific timetable for all activities, or it may contain a timetable for certain activities or results, with bidders asked to propose schedules for other activities.

In addition to conducting field tests, test developers will have to conduct studies to equate the versions of the tests currently under development with the prior year's versions of the tests. Ongoing research related to accommodations for special populations and other issues will also be required. A separate contractor will work with the test developers to link the national tests with the appropriate NAEP and TIMSS tests, so that results on the national tests may be compared with NAEP and TIMSS performance standards. This contractor will be competitively selected next fiscal year.

After the time period for actual administration of the national tests ends, the test instruments and scoring guides will be made available on the World Wide Web. This will allow others to use the tests, and it will provide parents, teachers, and the public an opportunity to see what students should know and be able to do. If possible, sample tests will be made available in the fall of 1998 so that parents and teachers will also have access to this information prior to the first administration of the tests. We want to do everything possible to make information available to help parents, teachers, and students prepare for these tests.

An evaluation contractor will be engaged before the first administration of the new national tests.

8.(a) *Question.* Do you plan to use actual NAEP tests (i.e., those used for the national and state assessments) for the individualized tests you propose or do you intend to create new test instruments?

Answer. New test instruments must be created, because NAEP is not designed to provide individual student results. No student takes the entire NAEP test. A number of different test booklets are used in the assessment, with some students taking one booklet, others another booklet, and so on. In this way, it is possible to keep testing time

for individual students to a minimum and yet provide estimates of student performance on a very comprehensive set of items.

With the new national tests, all participating fourth graders will take the same reading test, and all participating eighth graders will take the same mathematics tests. Each student will receive his or her own score.

8.(b) *Question.* If the latter, what specifically will be their relationship to NAEP?

Answer. The test and item specifications for the new national tests will be based on the NAEP frameworks for fourth grade reading and eighth grade mathematics to ensure that the new tests measure the knowledge and skills that are measured by the NAEP tests. In addition, we will support linking studies so that when test results are reported to parents and teachers, they will receive not only the student's score on the national reading or mathematics test, but also an estimated NAEP score in reading or mathematics and, in the case of mathematics, an estimated TIMSS score. This will allow parents and teachers to know where the student performed in relation to the NAEP levels of basic, proficient, and advanced. In the case of mathematics, they will also know, for example, whether the student scored above or below the international average, and if above, whether the student scored on a par with the top 10 percent internationally.

8.(c) *Question.* How do you know their results will be comparable?

Answer. We will base the national tests on the NAEP frameworks, and we will conduct studies to link results on the national tests with NAEP results to ensure that they are comparable. The many experts whom we have consulted believe that the technical aspects of this plan are sound.

9.(a) *Question.* If you are proposing to engage outside organizations in the preparation and conduct of these tests, such as through grants or contracts to non-federal entities, which specific ones do you propose to use?

Answer. Separate contracts will be awarded for the development of a national fourth grade reading test and for the development of a national eighth grade mathematics test as the result of a competitive procurement process. We have no idea who will win those contracts.

States, school districts, test publishers, and others will be eligible for certification to administer these tests. In order to receive certification, they will have to demonstrate that they can ensure standard administration and scoring of the tests. There will be no charge for certification. States and districts that are not certified to administer the tests, as well as private schools, will be able to have their students take the tests by making arrangements for administration and scoring with a certified entity. Our current plan is to award a competitive contract to an organization that will certify and enter into agreements with

those States, school districts, test publishers, and others that meet the certification requirements.

9.(b) *Question.* How will the grantees and contract recipients be selected and by whom?

Answer. We do not intend to award grants related to these tests. Contractors will be chosen through a competitive process. Technical proposals will be evaluated by Department officials and outside experts. Cost proposals will then be evaluated by contracting personnel, with the final source selection the responsibility of the contracting officer.

9.(c) *Question.* If by officials of the Department of Education, name those officials.

Answer. The selection of contractors is the responsibility of a contracting officer. The Assistant Secretary for Educational Research and Improvement, or his or her designee, and employees of the Office of Educational Research and Improvement will provide advice, in accordance with the source selection criteria that will be set forth in the solicitation.

9.(d) *Question.* If by "peer review," please name the federal officials who will select the reviewers and the types and qualifications of reviewers to be used.

Answer. The contracting officer will make the final decision regarding who will evaluate the technical proposals, based upon recommendations received from the Assistant Secretary for Educational Research and Improvement or his or her designee. The "peer" reviewers involved will be nationally recognized reading and mathematics experts and testing and measurement experts.

10.(a) *Question.* What specifically, if any, is to be the relationship of the National Assessment Governing Board (NAGB) to the proposed new tests?

Answer. The National Assessment Governing Board currently has no relationship to the national tests. The Governing Board's role is circumscribed by the National Education Statistics Act of 1994. The Board is established solely to formulate policy guidelines for the National Assessment of Educational Progress. Provisions of the NAEP authority require that all personally identifiable data about students and their performance remain confidential. This means that NAEP activities cannot include the development of tests for which individual student scores are reported, and thus that NAGB can have no role in such tests.

10.(b) *Question.* It has been reported that you may have decided that these tests, although based in some way on NAEP frameworks and NAGB standards, will be created and managed outside the existing NAEP administrative and policy structures. Please explain.

Answer. Please see our response above. A statutory change would be required to involve NAGB in these activities. We may ask Congress to consider this issue. However, we do not believe that NAGB's involvement is essential at

this juncture, and we do not want to delay the development of these tests.

11.(a) *Question.* Do you plan to use the NAGB "proficient" standard, or the "basic" standard as the fundamental "national standard?"

Answer. We do not plan to establish a "fundamental" national standard. We intend to ensure that students' scores can be reported in a manner that permits parents and teachers to know whether the students have attained NAGB's "basic," "proficient," or "advanced" levels. We believe, as does NAGB, that all children should be at least "proficient" in the basics and other subjects.

One immediate goal, however, is to motivate all students to attain at least the "basic" level in reading. Currently, 40 percent of fourth graders cannot read at the "basic" level, and yet we know that students must be able to read independently by fourth grade, or they will be unable to read to learn other subjects. This does not obviate the overall goal of reading "proficiently."

And, in mathematics, students must also master more challenging content. U.S. eighth graders scored slightly below the international average on the TIMS3 eighth grade mathematics test, and only 20 percent of them had studied algebra, compared with 100 percent of students in some of the top performing countries. We know that, without a strong background in mathematics by the eighth grade, students are unable to take the kinds of courses in high school that prepare them for college.

We must ensure that all students master the basic and advanced skills of reading and mathematics. We absolutely want to see more and more students attain the "proficient" and "advanced" levels. And, in the case of mathematics, we not only want to see all students score above the international average, we want to see more and more students perform with the top 10 percent internationally.

11.(b) *Question.* If the latter, how do you justify changing from the standard that both NAGB and the National Education Goals Panel have adopted as the level of achievement that all young Americans should be expected to reach?

Answer. We are not in conflict with NAGB or the Goals Panel. We hope to see parents and teachers provided with information about how students' performance on these tests compares with the NAGB achievement levels. States and school districts that use these tests may establish whatever challenging goals they wish. All children should be able to read independently and well by the fourth grade and prepared in mathematics to take the courses in high school that prepare them for college.

12. *Question.* How will you assure that use of these tests will be, and remain, voluntary and not become mandatory tests?

Answer. We have no authority, nor do we want any authority, to make these tests mandatory. That would require legislative action, which we will not seek.

13.(a) *Question.* Will it be possible for states and communities to "embed" or integrate the national tests in their own state and local testing programs?

Answer. It will be possible for States and communities to integrate the national tests into their own testing programs. However, in order for the results to be compared with NAEP, it will be necessary for the tests to be administered under comparable testing conditions. This means that the national tests will have to be taken in their entirety in a given testing session. The items could not be commingled with other items from other tests. Released versions of the tests can, of course, be used as States and communities wish.

13.(b) *Question.* How exactly will this be done?

Answer. There are a number of ways it could be done. We will leave those decisions to State and local officials and to test publishers. We will ask the developers of the national tests to outline criteria, to ensure test validity, which will be used in the process of certifying test administration organizations.

14.(a) *Question.* Please explain in detail the "standards" in the Third International Mathematics and Science Study (TIMSS) that, in your view, qualify TIMSS to be the proper basis for the eighth grade math test.

Answer. We have decided that the NAEP eighth grade mathematics test should be the basis for the national test in eighth grade mathematics. The framework, or content standards, for TIMSS was the result of international negotiations, which required that compromises be made. We believe that the content standards for the NAEP test are more reflective of widely accepted standards for what U.S. students should know and be able to do in eighth grade mathematics.

However, TIMSS provides a very important and useful international benchmark, and we intend to link the national eighth grade mathematics test to the eighth grade mathematics test used in TIMSS so that students can be provided with estimated TIMSS scores. This will allow them, and their parents and teachers, to know how their performance compares with that of their international peers.

14.(b) *Question.* How do TIMSS standards differ, if at all, from NAEP standards?

Answer. There is a great deal of overlap in the TIMSS and NAEP frameworks for eighth grade mathematics. That is why we will be able to link the new national test in eighth grade mathematics to the TIMSS test and provide students with estimated TIMSS scores, even though the test itself will be based on the NAEP mathematics framework. The NAEP framework is more elaborated than the TIMSS framework and more consistent with the con-

tent standards developed by the National Council of Teachers of Mathematics.

14.(c) *Question.* If the President's plan for testing moves forward, does it not make more sense to use eighth grade NAEP standards and tests for math? Why or why not?

Answer. We intend to use the NAEP framework for the eighth grade mathematics test, and students will receive estimated NAEP scores, as well as estimated TIMSS scores, so that their performance can be judged according to NAEP performance level standards. The rationale for this plan is explained above.

15.(a) *Question.* Why have you decided to limit this program to fourth grade reading and eighth grade math?

Answer. The purpose of these tests is to offer a common set of expectations and standards in the basic skills of reading and mathematics. We all know that being able to read independently by the fourth grade is a critical skill. Children who are unable to read independently by that critical transition period cannot read to learn science, history, and so on, and they are the children who most often go on to drop out or fail in school. Mathematics is the second basic, and the critical transition here seems to be at the eighth grade. Students who do not have a strong background in mathematics by the eighth grade are not able to take the kinds of courses in high school that prepare them for college.

15.(b) *Question.* How do you plan to deal with states that might prefer, for example, to use NAEP instruments for fourth grade math and eighth grade reading? Or science?

Answer. As explained in response to question 8(a), NAEP instruments are not appropriate for individual student use. They cannot be used to provide individual student scores. We plan to develop national tests only in fourth grade reading and eighth grade mathematics because reading and mathematics are the basic skills, and the critical transition period in reading is the fourth grade and in mathematics, the eighth grade. States can now and can continue in the future to participate in State-level NAEP assessments at other grade levels and in other subjects.

16. *Question.* Will the reading test be given only in English or in other languages as well?

Answer. The reading test will be a test of reading in English. Consequently, it will not be given in other languages. However, the mathematics test will be made available in a bilingual (Spanish-English) version.

17. *Question.* What accommodations, if any, do you intend to make for students with disabilities who take the tests?

Answer. Our intention is to make these tests as accessible to students with disabilities as possible. Braille and large print versions of the tests will be developed by the test developers. An audio cassette version of the mathematics test will also be developed. Test administrators will

be expected to provide additional accommodations at the testing site. These accommodations would include extended time, one-on-one testing, and other accommodations normally provided to the particular student when he or she participates in other tests at the school. Ongoing research will be conducted so that accommodations can be improved as time goes on.

18.(a) *Question.* In what form do you expect the test results to be made available to parents?

Answer. This decision will be left to States and school districts. The test developers will provide guidelines for reporting results, which will be used in the process of certifying test administration organizations. The tests will be designed so that results can be reported to parents and teachers in an easily understandable metric. Estimated NAEP scores and, in the case of mathematics, estimated TIMSS scores will also be available.

18.(b) *Question.* How will the confidentiality of individual test-takers be protected?

Answer. In order to become a certified test administration entity, a State, school district, or test publisher will have to demonstrate that the confidentiality of students will be protected. These tests and the use of them will have to meet the Standards for Educational and Psychological Testing of the American Psychological Association, the American Educational Research Association, and the National Council for Measurement in Education.

18.(c) *Question.* Will parents be able to obtain school-specific data?

Answer. This decision will be made by the State or the school district, not by the Federal Government. We will encourage States and districts to provide overall school performance data to parents without breeching the confidentiality of individual student test scores. We believe that informing parents about how schools stack up against national performance levels is a significant potential benefit of these tests.

18.(d) *Question.* Will parents be able to obtain school-specific data for schools other than the one(s) their own child or children attend?

Answer. This decision will be made by the State or the school district, not by the Federal Government. As indicated above, we will encourage States and school districts to provide this information.

19.(a) *Question.* Do you intend to create new advisory committees to help design and oversee this program? If so, please explain.

Answer. We are considering options for the establishment of appropriate advisory committees. Contractors will be required to establish their own committees to advise them on their work, including committees to advise on technical issues.

19.(b) *Question.* If so, why are you doing that rather than relying on NAGB?

Answer. We explained in response to question 10(a) why NAGB presently has no role regarding these tests. We are not opposed, however, to further considering this option.

19.(c) *Question.* Who will appoint these new committees?

Answer. Contractors will be responsible for appointing their own committees. If any advisory committees are established by the Department, members will be appointed by the Secretary.

19.(d) *Question.* What types of individuals will be appointed?

Answer. The types of individuals who will appointed to any advisory committees include reading and mathematics experts, testing and measurement experts, persons who are knowledgeable about making tests accessible to limited English proficient and disabled students, educational leaders, teachers, and parents. Appointees will be selected to assure public confidence in the integrity and non-partisan nature of this initiative.

19.(e) *Question.* How many individuals will be appointed to such committees?

Answer. We have no specific numbers at this time.

19.(f) *Question.* What criteria do you intend to use for such appointees?

Answer. Contractors will be expected to appoint nationally recognized experts. If any appointments are made by the Department, we will do the same.

20. *Question.* How do you plan to deal with states which may have state assessments and standards which are more rigorous than any new national tests or standards?

Answer. States will not be required to use these tests. However, whatever level a State's standards, these tests should be useful to inform parents how their children score against national—and in the case of mathematics, international—performance levels.

21. *Question.* Will states that wish to do so be free to use these test results for "high stakes" purposes?

Answer. As is the case with all tests used by States and districts, the use of these tests will have to be consistent with the Standards for Educational and Psychological Testing. This means they can be used only for purposes for which they have been validated. States that wish to use the tests for "high stakes" purposes will have to collect the information to demonstrate that they are valid for such uses. This could not be done prior to the first administration of the tests.

22. *Question.* What is the relationship of the new tests to the state standards and state assessments aspects of Goals 2000?

Answer. States will have to make these decisions. They will be free to use the national tests as part of their State assessment programs. No State will be required to use these tests in order to continue receiving Goals 2000 funds.

23. (a) *Question.* At least 32 states have developed state standards, and an additional 14 report that standards de-

velopment is underway. In addition, 45 states report that they have statewide assessment systems. How will "national standards" affect states who have already developed and are using state standards?

Answer. This will be up to the States. We will work with them to make sure that the national tests can be integrated with their assessment systems. For many States, however, NAEP proficiency levels are more challenging than the State's own standards. In general, the percentages of students who reach the proficient level on NAEP are lower than the percentages who reach the proficient levels on States' assessments.

23. (b) *Question.* If the national standards are different from the states' standards, will the states have to change their standards?

Answer. Such decisions will be left entirely to the States. As far as content standards are concerned, however, there seems to be widespread agreement across the country about the basic skills of reading and mathematics. The Council of Chief State School Officers, for example, managed the consensus process that resulted in the frameworks for the NAEP fourth grade reading and eighth grade mathematics assessments. The mathematics framework is very consistent with the content standards developed by the National Council of Teachers of Mathematics, and those standards are heavily relied upon as States establish their own standards. In these two basic skill areas, the differences in standards will probably relate primarily to performance levels, not content.

24. *Question.* What provision, if any, does the President's proposal make for private and home-schooled students to be able to take these tests?

Answer. Private schools will be able to use these tests by obtaining them from certified test administration organizations, such as States, school districts, or test publishers. A private school that wants the Federal Government to reimburse the costs of administering the tests to its students would have to provide certain civil rights assurances related to admissions and test administration.

Home-schooled students will be able to take these tests when they are released to the public following the close of the test administration period. Anyone may use the tests at that time. Scoring guides, as well as the tests themselves, will be made available.

25. *Question.* How will you ensure these security?

Answer. The test development contracts, as well as the agreements with certified test administration agencies and organizations, will include procedures to ensure the security of these tests. Particularly because new test questions will be developed each year, we expect these tests to be more secure than most tests that are widely available.

Question. Will states be permitted to require teachers to take the same tests that their pupils are taking?

Answer. Yes. This is a decision for States and districts to make, consistent with State and local law and any collective bargaining agreements.

Question. If a state decides not to use the national tests in reading and math, can a local educational agency still go forward and use the test?

Answer. Yes, a school district may use the tests whether they are used throughout the State or not. In fact, we would encourage districts to use the tests.

EXHIBIT C

U.S. DEPARTMENT OF EDUCATION,
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION,
Washington, DC, September 16, 1997.

MEMORANDUM TO CHIEF STATE SCHOOL OFFICERS

Subject: Questions and Answers on the relationship of Title I Requirements to the National Voluntary Tests.

Enclosed are questions and answers that clarify the Department of Education's position on the relationship between the standards and assessment requirements of Title I and the proposed National Voluntary Tests in reading in grade 4 and mathematics in grade 8.

If you need further clarification, call Mary Jean LeTendre at 202–260–0826 of fax your questions to 202–260–7764.

GERALD N. TIROZZI.

Enclosure.

Question. May the national tests be used by the States, in part, as the assessments required under Title I of the Elementary and Secondary Education Act?

Answer. Yes. Title I requires a State to use challenging content and student performance standards developed for all students under the Goals 2000: Educate America Act or under another process or, absent such standards for all students, to develop for children served under Title I challenging content and student performance standards that reflect the State's expectations for all children. The State must also develop or adopt assessments aligned with these standards. Thus, if a State determines that the national tests are aligned with the State's standards, those tests may be used for Title I purposes. Because the national tests will be based on the content frameworks of the National Assessment of Educational Progress, they will reflect a national consensus among educators, testing experts, and other leaders on what children should know and be able to do in reading English at the fourth grade level and in mathematics at the eighth grade level. We therefore expect that the tests generally will be aligned with most, if not all, States' efforts to develop challenging content and performance standards in these subjects at the indicated

grade levels. Moreover, the national tests will be developed according to the highest professional and technical standards; will be administered with accommodations for children with disabilities and limited English proficient children; will yield scores at three levels of performance; and will permit scores to be disaggregated in accordance with Title I provisions. The national tests thus can be an important resource to States in carrying out Title I's vital goal of holding students who participate in Title I to the same high standards expected of all students.

Question. Will use of the national tests by a State fully meet its assessment obligations under Title I?

Answer. For most children, use of the national tests will meet a State's obligations under Title I to assess performance in reading at the fourth grade level and in math at the eighth grade level. However, consistent with the inclusion criteria for the national tests, some students with limited English proficiency or with disabilities may not be included in the national tests. Other appropriate assessments would need to be administered for these students in reading/language arts and math to meet the Title I requirements. Moreover, Title I requires annual State assessments in at least reading/language arts and math in at least one grade in each of the following clusters of grades: grades 3 through 5; grades 6 through 9; and grades 10 through 12. Therefore, other assessments would be needed for the grades 10 through 12 cluster if there are Title I programs in schools serving those grades. In addition, other State assessments in math in the grades 3 through 5 cluster and in reading/language arts in the grades 6 through 9 cluster would be required under Title I.

Question. Since the fourth grade national reading test will be given only in English, can it be used for Title I assessment purposes?

Answer. States generally are required by Title I to test all students—including children with disabilities and limited English proficient children—in reading/language arts in the grades selected for assessment. Limited English proficient children are to be assessed, to the extent practicable, in the language and form most likely to yield accurate and reliable information on what those students know and can do to determine their mastery of skills in subjects other than English. Thus, a State may use a particular test, such as the national reading test, for limited English proficient children for whom the test would be appropriate, and use other comparable reading tests that assess the State's standards, but would be more appropriate for children with less English proficiency.

We believe that the fourth grade test in reading English—with appropriate accommodations for children with disabilities and limited English proficient children—will be appropriate for most fourth grade children. Inclusion criteria for the tests will reflect that judgment. Limited English proficient students who may be excluded from

the national reading test—i.e., children who have received instruction in English for less than three years—would need to be given for Title I purposes, another State reading/language arts test in, to the extent practicable, the language and form most likely to yield accurate and reliable information on what they know and can do. Title I requires the States to make every effort to develop assessments in languages other than English as they are needed and directs the Secretary, through the Office of Bilingual Education and Minority Languages Affairs, to assist the States, at their request, in identifying appropriate assessment measures in other languages. The Department is prepared to provide that assistance.

EXHIBIT D

WASHINGTON, DC, *October 1, 1997.*

Hon. RICHARD W. RILEY,
Secretary of Education,
Washington, DC.

DEAR MR. SECRETARY: When it was announced on Thursday, September 25, that you had halted temporarily the Department's work on the President's plan for federalized testing of all students, we took the announced suspension as a sign of your good faith.

However, it now appears the reported "suspension" of work came at the close of a busy and costly week designing test development. We must say, it would have been better for the country, and cheaper for taxpayers, if you had called timeout before the swarm of test developers descended for a two-day session at one of the capital's most expensive hotels, The Four Seasons. We are told that a one-night stay for two people there costs $370—unless you want the best view.

These meetings cast doubt on the Administration's ability to work with Congress on this issue. Please note in the enclosed news article that the test designer participants in this gathering expressed their discomfort at flying in the face of congressional deliberations by suggesting that the meeting be put off until Congress settled the testing controversy. According to the article, your Deputy Secretary rejected the suggestion out of hand.

Moreover, while the expenditure of millions of dollars for federal testing concerns us deeply, the extravagance and arrogance of this session are an affront to the taxpayers of this nation. The taxpayers deserve to know the cost of this gathering on September 22 and 23, and what you will do to assure that they are not stuck directly or indirectly with the cost of travel, meeting rooms, lodging, and catered meals. Perhaps the next bunch of experts you bring to Washington could be persuaded to conduct the meetings at a college campus, or at the Department itself.

The extravagance of the venue and the arrogance attributed to the Deputy Secretary reinforce the justifiable suspicion held by American families over federalized student tests. The government's record in the area of federalized academic standards is one of abject failure. This new attempt by the Department to intrude further into local schools should be halted permanently.

The Department's experiment with nationwide testing is multiply flawed. First, it will undercut the control of schools by parents, teachers, and local boards. This will occur because nationalized testing inevitably will drive curriculum and instruction, leading to a national curriculum designed in Washington. Such a national curriculum depriving families of their right to shape education at the local level would be a disaster.

Second, schools already administer many different tests. Our students need more knowledge, not simply more tests.

Finally, the use of "fuzzy" math, or whole math, in the proposed tests aligns the Department with yet another educational fad, one associated with falling test scores among Defense Department students subjected to such teaching methods and curriculum.

Please provide detailed responses to the following questions by October 7, 1997.

Did the Deputy Secretary in fact reject the idea of deferring test development until Congress had settled the issue? What was the total cost (including all expenses) associated with the meetings held at The Four Seasons Hotel on September 22 and 23? What will you do to assure that the taxpayers are not billed directly or indirectly for the cost of these meetings? How much has the Department expended to date on the development of nationwide individualized testing?

Thank you for your immediate attention to these matters.

Sincerely,

JOHN ASHCROFT,
U.S. Senate.
WILLIAM F. GOODLING,
Chairman, Committee on Education and the Workforce, House of Representatives.

Enclosure.

[From the Weekly Standard, Oct. 6, 1997]

CLINTON'S CONTRACTORS DIS CONGRESS

If anything is clear in the murky debate about national education testing, it's that Congress doesn't want the Clinton administration to continue in the course it's been on: constructing tests of fuzzy math and whole language with the help of committees and contractors picked by the Edu-

cation Department from the heart of the public school establishment.

In recent weeks, the Senate voted 87–13 to reassign the testing venture to an independent board, while the House voted 295–120 to call a halt to the whole thing. You might suppose the White House—which says salvaging this ill-begun venture is its top priority and is threatening vetoes if Congress kills it—would at least put its contractors on hold while it seeks to work with Congress. But no.

Last week, Georgetown's posh Four Seasons Hotel hosted a two-day meeting of test developers and several dozen "advisers" convened by the Council for Basic Education, which stands to earn a tidy sum for its part in the $13 million contract now in force. When nervous participants asked the Education Department if maybe the meeting ought not be deferred until Congress makes up its mind, Deputy Secretary Marshall Smith (who picked all these folks) said: Nothing doing.

Smith's Folly, as some Hill-dwellers term the testing scheme, continues at flank speed. "They're sticking their fingers in our eyes," complains a House staffer. Someone as deft at education politics as William Jefferson Clinton might be expected to know better. But the administration is getting cocky. Congress is scared to fight back. The contractors are getting paid. The hotel welcomes the business. And we foot the bill.

EXHIBIT E

U.S. DEPARTMENT OF EDUCATION,
Washington, DC, October 9, 1997.

Hon. WILLIAM F. GOODLING,
House of Representatives,
Washington, DC.

DEAR MR. CHAIRMAN. I am pleased to respond to your letter of October 1, 1997. I regret that you have been misled by a press account of the meeting held by the Council for Basic Education on September 22 and 23 and am happy to take this opportunity to provide factual information about the meeting. Furthermore, I was disappointed to see that you described this as "federalized" testing for all students. I am sending a similar reply to Senator Ashcroft.

I think it is important to note that the meeting was planned, announced and held prior to the decision by the Department to cease temporarily the contractor's work on test item development. In order to secure the best advice from classroom teachers, experts and citizens, the meeting was attended by 60 people at costs of $13,654 for meals, rooms and conference space; $7,600 for transcription services; $7,350 for stipends to panelists; and approximately $10,000 in transportation costs.

While the meeting was held at the Four Seasons Hotel, the meeting participants did not stay there. They stayed at the Georgetown Suites as a cost of $124.00 per night, which is the standard government rate of Washington, D.C. The meeting was conducted at the Four Seasons because the Georgetown Suites did not have conference rooms available, the Four Seasons is within walking distance of the Georgetown Suites, and the Four Seasons provided meals for conference participants at rates comparable to other hotels, but with a lower service charge. The hotel accommodations and meeting costs were well within established government rates and do not represent an extravagant cost to the taxpayer.

The Acting Deputy Secretary of Education, Marshal S. Smith, did not attend the meeting or provide instructions to the participants. The panelists at the meeting were selected solely by the Council for Basic Education.

With reference to your characterization of this as "federalized testing of all students," it is important to reiterate that these tests will be no more "federalized" than the highly regarded and widely used National Assessment of Educational Progress. While development of the tests would be supported with federal funds, under our proposal as passed by the Senate they will be developed under the control of the independent, bipartisan National Assessment Governing Board. As you well know, the Administration has made quite clear that they will be totally voluntary in nature, administered at the discretion of state and local officials.

In closing, you inquired as to how much the Department has expended to date on development of the tests. The Department estimates that the contractors have expended approximately $3 million for those purposes to date.

I hope this information is useful.

Yours sincerely,

RICHARD W. RILEY, *Secretary.*

EXHIBIT F

U.S. DEPARTMENT OF EDUCATION,
Washington, DC, October 1997.

DEAR SCHOOL BOARD CHAIR: The American public is focused as never before on education, and on the need to ensure that no student is left behind in mastering basic and advanced skills, especially in reading and math. As a school board member, you are in the position to develop policies that articulate clearly what students should know and be able to do in your schools. Also, you have the forum to engage your school district leadership and staff, as well as the public in an ongoing dialogue about these expectations.

I am writing to make you aware of vital information that you can use to inform your efforts and I am also sharing

it with other educational leaders. The Third International Mathematics and Science Study (TIMSS), the most thorough international study of math and science education ever conducted, provides important information comparing the performance of a half million students, including 33,000 Americans, at levels corresponding to U.S. grades 4, 8, and 12. We now have the results for the fourth and eighth grades.

TIMSS shows that the achievement of our fourth-grade students is quite high: above the international average in both math and science, and in science outperformed only by Korea. However, by eighth grade, our students are not doing as well, particularly in mathematics. Among the 41 nations participating in TIMSS, U.S. eighth graders score above the international average in science, but below the international average in mathematics.

Our fourth-grade performance in math and science should give us all renewed hope and excitement about the importance and promise of public education in America. However, our poor performance in mathematics at the eighth grade suggests that we must increase our efforts to improve the teaching and learning of this critical subject in the late elementary and middle school years. Information from TIMSS can inform those efforts. TIMSS thoroughly investigated curricula, teaching methods, and other factors that help explain differences in student achievement and found important differences between the U.S. and high-performing nations. Two key differences the study identified are: our expectations for our students and our teaching methods.

Expectations. The U.S. expects less of its middle school and junior high students compared to high performing nations. In Germany and Japan, virtually all students in grades five through eight move beyond arithmetic to the foundations of algebra and geometry. In the U.S., students generally are not exposed to these more advanced topics prior to high school. As a result, the content taught in U.S. eighth-grade mathematics classrooms is usually at a seventh-grade level compared to the 40 other nations in the TIMSS study.

Teaching. TIMSS found that U.S. mathematics classes require students to engage in less high-level mathematical thought and solve fewer multistep problems than classes in Germany and Japan. A U.S. mathematics teacher's typical goal is to teach students how to do something, while a Japanese teacher's goal is to help them learn these basics and also understand mathematical concepts. In a typical U.S. classroom, students follow the teacher as he or she leads them through solutions to mathematics problems. In Japan, students are asked to solve problems, present them to the class, and describe how they approached the problem to increase their own understanding.

A full summary of TIMSS fourth- and eighth-grade findings related to mathematics is attached, along with infor-

mation on useful materials for parents, teachers, and school district leaders based on TIMSS. This new research can inform the work of school boards: the reports you commission, the questions you ask, and the policies you adopt. For example, school board members can:

Examine whether the curriculum in grades five through eight in your district includes significant amounts of algebra, geometry and complex problem-solving.

Ask what percent of students have the opportunity to take algebra or a similarly demanding course in eighth grade, and how that percentage can be increased to near 100 percent;

Ask administrators about instructional practices, such as how often students are asked to solve multistep problems, to explain their solutions to the class, and to answer the question, "Why?"

Another important way to use TIMSS is to look at the specific questions on the fourth- and eighth-grade tests, examples of which are attached. These questions are concrete examples of what internationally competitive standards look like. They allow you to determine whether students in your community can meet this standard, or even perform as well as the U.S. average.

In 1999, your district has the opportunity to participate in a voluntary national test of mathematics at grade eight that will provide individual student scores, and will be linked to the National Assessment of Educational Progress (NAEP) and to TIMSS. Participating in this mathematics test will tell you how your students are doing compared to students in other states and other nations. There will also be a voluntary national test in reading at grade four—another critical subject.

It is clearer than ever that mathematics proficiency is a gateway to college, productive employment and civic participation. In order to succeed in the world they will inherit from us—a world of great complexity, opportunity, and uncertainty—all U.S. students will need to perform at world-class levels. We encourage you in your stewardship of your local schools, to share this information with members of your board, and take this opportunity to begin a dialogue with your superintendent, principals, teachers, parents, and others who are concerned about improving our students' achievement.

Yours sincerely,

RICHARD W. RILEY, *Secretary.*

EXHIBIT G

NATIONAL ASSESSMENT GOVERNING BOARD

NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS

To: National Assessment Governing Board.
From: William T. Randall, Chairman, Special Committee to Review the Test Development Contract.
Subject: Committee Recommendations on the Test Development Contract for the Voluntary National Tests.
Date: January 15, 1998.

Background

At the November 1997 Governing Board meeting, Chairman Mark Musick established this Special Committee. The Chairman asked the committee to review the Voluntary National Test Development Contract (RJ97153001), as required by P.L. 105–78, and to present recommendations on the contract at the January 22, 1998 Board meeting.

Under P.L. 105–78, the Governing Board is given exclusive authority over all policies, direction and guidelines for developing voluntary national tests pursuant to the contract. In addition, the law requires the Board to review the contract and accept, modify, or terminate it within 90 days (i.e., by February 11, 1998).

The Special Committee has completed its review. Following below is an overview of the committee recommendations, which will be discussed in detail at the Board meeting.

Overview of Committee Recommendations

The committee's recommendations are contained in revisions to the Statement of Work under which the contract was first awarded. They directly address what the Congress asked the Governing Board to do:

Ensure that the voluntary national tests are based on the same content and performance standards as are used in the National Assessment of Educational Progress and are linked to the National Assessment to the maximum extent possible;

Provide for broad public involvement as the tests are developed;

Assure that the tests are fair, accurate, and technically sound;

Assess what students should know and be able to do, as defined by NAEP frameworks and achievement levels, independent of how students were taught;

Respect the prohibitions under P.L. 105–78;

Assume responsibility for policy and oversight of test development.

The primary aim of the Voluntary National Tests is to produce an individual form of NAEP that will provide student-level results according to the Governing Board's performance standards: Basic, Proficient, and Advanced.

The committee recommends that the current contractor be instructed to modify the contract consistent with specific changes to the Statement of Work to be approved by the Board. The Statement of Work should be changed to reflect: (1) the policy and oversight responsibility given to the Board by Congress, (2) congressional intent that the voluntary national tests be based on NAEP, (3) activities that are prohibited using FY 1998 appropriations, (4) only activities necessary and desirable for test development, and (5) the first year of test administration being 2001. These are described more fully below.

1. The Governing Board should require the current contractor to modify the contract proposals.

The Contract Proposal must be changed in significant ways consistent with the revised Statement of Work, as approved by the Governing Board. Tasks, activities, and/or deliverables must be deleted, modified, or added, consistent with the revised Statement of Work, in order for this contract to be acceptable. The Governing Board should transmit to the contractor by January 23, 1998, the revised Statement of Work and complete action on the contract changes with the contractor by February 11, 1998. The contract shall be terminated if the contractor's response is not acceptable.

2. The Statement of Work and contract proposals should be revised, consistent with P.L. 105–78, to clarify that exclusive authority over all policies, direction and guidelines for developing voluntary national tests pursuant to contract RJ97153001 is vested in the Governing Board.

The original Statement of Work was written, and the contract awarded, prior to enactment of P.L. 105–78. The original Statement of Work and contract proposal assume no role for the Governing Board in setting policy with respect to the voluntary national tests. Instead, management and oversight of the contract are assumed to be responsibilities of the Department of Education. The attached Statement of Work contains the recommendations of the Special Committee on changes that should be made to reflect the Governing Board's responsibilities under P.L. 105–78. This includes changing certain tasks, deliverables and timelines (e.g., regarding the development of policies on reporting, test use, and accommodations) to take into account the Board's policy setting role, the schedule of Governing Board meetings, and the need to obtain expert advice and wide public comment.

3. The Statement of Work and the contract proposal should be modified to reflect the intent of Congress that the Voluntary National Tests be based on the same content and performance standards are used in the National Assessment of Educational progress and be linked to the National Assessment to the maximum extent possible.

The conference report accompanying P.L. 105–78 states that the Voluntary National Tests will be based on the same content and performance standards as the National

Assessment of Educational progress and will be linked to the National Assessment to the maximum extent possible. The current contract states that test specifications will be prepared by a separate contractor and transmitted when completed to the test development contractor. However, under P.L. 105–78, the approval of final test specifications and of all test items will be the responsibility of the Governing Board. Accordingly, the attached Statement of Work contains the recommendations of the Special Committee on changes that should be made to reflect congressional intent on the relationship of the Voluntary National Tests to the National Assessment.

4. The Statement of Works and contract proposal should be changed to reflect activities that are prohibited using FY 1998 appropriations.

Under P.L. 105–78, no FY 1998 funds may be used to pilot test, field test, implement, administer, or distribute in any way, any national tests, with the exception of NAEP and the Third International Mathematics and Science Study (TIMSS). Accordingly, the attached Statement of Work contains the recommendations of the Special Committee on changes that should be made to clarify that: (1) the conduct of pilot tests, field tests, implementation, administration, and distribution of national tests shall not begin prior to October 1, 1998 and (2) as appropriate and necessary, planning and preparations for pilot testing, field testing, implementation, administration and distribution may be carried out consistent with the Statement of Work.

5. The contract proposal should be changed to ensure that only work that is necessary and desirable for test development is supported under the contract.

In reviewing the contract proposal, the Special Committee found examples of activities beyond the scope of test development. The attached Statement of Work cites specific examples in the current contract proposal and requires the contractor to delete from the proposal all activities not specifically required under the Statement of Work.

6. The target year for the first administration of the Voluntary National Tests should be changed from the year 2000 to the year 2001 to provide adequate time for test development and to ensure the technical quality of the equating of multiple versions of the tests and the linking of those multiple versions to NAEP and TIMSS.

Developing an individual form of NAEP, reporting results to individual students by achievement levels, using multiple equated versions of the tests, and linking the results to NAEP and TIMSS all are "first ever" undertakings that will involve many technical challenges. Therefore, minimizing threats to success should be a central principle in the design of the pilot and field testing. Under the contractor's current design, pilot testing would occur in the fall and, therefore, include 4th and 5th graders for the fourth grade reading test and 8th and 9th graders for the eighth grade mathematics test. However, field testing

would occur in March, the same time of year as planned for administration of the Voluntary National Tests.

The Special Committee believes that pilot testing should occur in March, the year before field testing, using 4th and 8th graders only, so that the conditions for pilot, field and operational testing are as similar as possible and so that there is ample time for test development, analysis and planning from stage to stage of this complex activity. Accordingly, the Special Committee has recommended changes to the schedule in the attached Statement of Work. This schedule will result in the first pilot test being conducted in March of 1999, the field test in March of the year 2000, and the operational test in March of the year 2001.

The members of the Special Committee to Review the Test Development Contract appreciate the opportunity to review the contract and prepare these recommendations. We look forward to the discussion with the Board at the meeting on January 22.

SECTION BY SECTION ANALYSIS

H.R. 2846, a bill to prohibit spending Federal education funds on national testing without explicit and specific legislation, as reported by the Committee on Education and the Workforce on January 28, 1998.

Section 1 contains the findings of the bill.

Section 2 inserts language into Part C of the General Education Provisions Act to prohibit spending on the development, planning, implementation (including pilot testing or field testing) or administration of any Federally sponsored national test that is not specifically and explicitly authorized in law. The bill provides exceptions for: (1) limited test development activities pursuant to P. L. 105–78 and only in fiscal year 1998; and (2) the Third International Math and Science Study (TIMSS) or comparable international assessments administered to representative samples of students pursuant to section 406(a)(6) of the National Education Statistics Act of 1994. The National Assessment of Educational Progress (NAEP), which is currently *specifically and explicitly* authorized in sections 411–413 of the National Education Statistics Act of 1994, would be unaffected by the legislation.

EXPLANATION OF AMENDMENTS

The Amendment in the Nature of a substitute is explained in this report.

COMMITTEE ESTIMATE

Clause 7 of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 2846. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Con-

gressional Budget Office under section 403 of the Congressional Budget Act.

CONSTITUTIONAL AUTHORITY STATEMENT

The prohibition on federally funded national testing and the other elements of this bill are within Congress' authority under the spending clause of the Constitution, Article I, section 8, clause 1.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. This bill prohibits federally funded national testing; the bill does not prevent legislative branch employees from receiving the benefits of this legislation.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act requires a statement of whether the provisions of the reported bill include unfunded mandates. This bill prohibits federally funded national testing, and as such does not contain any unfunded mandates.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 2(l)(3)(A) of rule XI and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

STATEMENT OF OVERSIGHT FINDINGS OF THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 2846.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 2(l)(3)(B) of rule XI of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 2(l)(3)(C) of rule XI of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2846 from the Director of the Congressional Budget Act:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 29, 1998.

Hon. WILLIAM F. GOODLING,
Chairman, Committee on Education and the Workforce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2846, as ordered reported by the House Committee on Education and the Workforce on January 28, 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Justin Latus.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 2846—A bill to prohibit spending Federal education funds on national testing without explicit and specific legislation

CBO estimates that enacting this bill would have no impact on the federal budget. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not affect the budgets of state, local, or tribal governments.

The fiscal year 1998 appropriation act for the Department of Education allows only certain very limited activities related to testing. H.R. 2846 would allow these activities to continue but would prohibit any expansion of these activities unless specifically provided in authorizing legislation. Since CBO assumes that no expanded activities related to testing would occur under current law, CBO estimates that H.R. 2846 would have no budgetary effects.

The CBO staff contact for this estimate is Justin Latus. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 1 BILL H.R. 2846 DATE January 28, 1998
DEFEATED 15 - 23

SPONSOR/AMENDMENT Mr. Andrews/ Motion to postpone consideration of this bill to a date certain

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. GOODLING, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mrs. ROUKEMA		X		
Mr. FAWELL		X		
Mr. BALLENGER		X		
Mr. BARRETT		X		
Mr. HOEKSTRA		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. TALENT				X
Mr. GREENWOOD		X		
Mr. KNOLLENBERG		X		
Mr. RIGGS				X
Mr. GRAHAM		X		
Mr. SOUDER		X		
Mr. McINTOSH		X		
Mr. NORWOOD				X
Mr. PAUL		X		
Mr. SCHAFFER		X		
Mr. PETERSON		X		
Mr. UPTON		X		
Mr. DEAL				X
Mr. HILLEARY		X		
Mr. SCARBOROUGH		X		
Mr. CLAY	X			
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. MARTINEZ	X			
Mr. OWENS				X
Mr. PAYNE	X			
Mrs. MINK				X
Mr. ANDREWS	X			
Mr. ROEMER		X		
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. ROMERO-BARCELO	X			
Mr. FATTAH	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND				X
Ms. SANCHEZ		X		
Mr. FORD	X			
Mr. KUCINICH	X			
TOTALS	15	23		7

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 2 BILL H.R. 2846 DATE January 28, 1998
PASSED 23 - 16

SPONSOR/AMENDMENT Mr. Petri / Motion to report the bill to the House with an amendment and with the recommendation that the amendment be agreed to and that the bill as amended do pass

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. GOODLING, Chairman	X			
Mr. PETRI, Vice Chairman	X			
Mrs. ROUKEMA	X			
Mr. FAWELL	X			
Mr. BALLENGER	X			
Mr. BARRETT	X			
Mr. HOEKSTRA	X			
Mr. McKEON	X			
Mr. CASTLE	X			
Mr. JOHNSON	X			
Mr. TALENT				X
Mr. GREENWOOD	X			
Mr. KNOLLENBERG	X			
Mr. RIGGS	X			
Mr. GRAHAM	X			
Mr. SOUDER	X			
Mr. McINTOSH	X			
Mr. NORWOOD				X
Mr. PAUL	X			
Mr. SCHAFFER	X			
Mr. PETERSON	X			
Mr. UPTON	X			
Mr. DEAL				X
Mr. HILLEARY	X			
Mr. SCARBOROUGH	X			
Mr. CLAY		X		
Mr. MILLER		X		
Mr. KILDEE		X		
Mr. MARTINEZ		X		
Mr. OWENS				X
Mr. PAYNE		X		
Mrs. MINK				X
Mr. ANDREWS		X		
Mr. ROEMER	X			
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. ROMERO-BARCELO		X		
Mr. FATTAH		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KIND				X
Ms. SANCHEZ		X		
Mr. FORD		X		
Mr. KUCINICH		X		
TOTALS	23	16		6

BEST COPY AVAILABLE

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

PART C OF THE GENERAL EDUCATION PROVISIONS ACT

* * * * * * *

PART C—GENERAL REQUIREMENTS AND CONDITIONS CONCERNING THE OPERATION AND ADMINISTRATION OF EDUCATION PROGRAMS; GENERAL AUTHORITY OF THE SECRETARY

* * * * * * *

SUBPART 3—ADMINISTRATION OF EDUCATION PROGRAMS AND PROJECTS BY STATES AND LOCAL EDUCATIONAL AGENCIES

* * * * * * *

§447. Prohibition on federally sponsored testing

(a) GENERAL PROHIBITION.—Notwithstanding any other provision of Federal law and, except as provided in sections 305 through 311 of Public Law 105–78, the Labor, Health and Human Services and Education Appropriations Act, 1998, funds provided to the Department of Education or to an applicable program under this Act or any other Act, may not be used to develop, plan, implement (including pilot testing or field testing), or administer any federally sponsored national test in reading, mathematics, or any other subject that is not specifically and explicitly provided for in authorizing legislation enacted into law.

(b) EXCEPTIONS.—Subsection (a) shall not apply to the Third International Math and Science Study or other international comparative assessments developed under authority of section 406(a)(6) of the National Education Statistics Act of 1994, and administered to only a representative sample of pupils in the United States and in foreign nations.

SUPPLEMENTAL VIEWS

Congress is preparing to consider HR 2846, which forbids the use of federal funds to develop or implement a National Test without explicit authorization from Congress. Supporters of protecting the United States Constitution from overreaching by the Executive Branch should support this bill. Article I of the United States Constitution grants Congress sole authority to determine how executive agencies spend taxpayers' monies. Therefore, the Administration's plan to develop and implement a national education test without Congressional authorization is a power grab by the Executive Branch violative of the constitutional doctrine of separation of powers.

However, support of this bill should in no way be interpreted to imply that Congress has the power to authorize national testing. After all, Congress, like the Executive and the Judicial branches of government, must adhere to the limitations on its power imposed by the United States Constitution. Although many seem to have forgotten this, in our system, the limits set by the Constitution, rather than the will of any particular Congress, determine the legitimate authority of the United States Government.

Under the United States Constitution, the federal government is prohibited from developing and implementing a national test, or any program dealing with education. Education is not one of the powers delegated to the federal government, and, as the ninth and tenth amendment make clear, the federal government can only act in those areas where there is an explicit delegation of power. Therefore, the federal government has no legitimate authority to legislate in the area of education rather all matters concerning education, including testing, in the hands of those best able to educate children—individual states, local communities, and, primally, parents.

Implementation of a national test also must be opposed because of its primary effect: the de facto creation of a national curriculum. Many supporters of national testing try to minimize this threat to local and parental sovereignty by claiming the program would be voluntary. However, these are many of the same people who consider Goals 2000 a "voluntary" program, despite the numerous times Goals 2000 legislation uses the terms "shall" and "must" in describing state functions. Furthermore, whether or not schools are directly ordered to administer the tests, schools will face pressure to do so as colleagues and employers inevitably begin to use national tests as the standard by which students are measured for college entrance exams and entry-level jobs. At the very least, schools would soon find federal, and perhaps even state, funding conditioned upon their "voluntary" participation in the national testing program.

When all, or at least the majority of, schools are administering national tests, the tests will then be the standard by which all schools will be measured. Those schools whose students did poorly on the national tests would be labeled as doing a poor job of educating children.

Educators would react to this pressure to ensure students scored highly on the national test by "teaching to the test"—that is, structuring the curriculum so students learn those subjects, and only those subjects covered by the national tests. As University of Kansas Professor John Poggio remarked in February of last year, "What gets tested is what will be taught." Government bureaucrats would then control the curriculum of every school in the nation, and they would be able to alter curriculums at will by altering the national test!

Private schools and home schools will be affected as well, as performance on the national tests becomes the standard by which student performance is judged. Those in private and home schools will face increasing pressure to participate in national testing and shape what is taught to fit the criteria of the tests.

National testing is a backdoor means by which the federal government can control the curriculum of every school in the nation. Implementation of national testing would be a perhaps fatal blow to constitutional government and parental control of education.

The Executive Branch has no constitutional authority to implement and develop a national test and the Congress has no authority to authorize the test. I therefore urge my colleagues to support HR 2846, which stops the Administration from ultimately implementing national tests and oppose all legislation authorizing the creation of a national test. Instead, this Congress should work to restore control over their children's education to the American people by shutting down the federal education bureaucracy and cutting taxes on America's parents so they may provide for the education of their own children.

RON PAUL.

MINORITY VIEWS

The majority states in its views that "the Committee strongly believes the proper forum for addressing the President's federal testing proposal is during reauthorization hearings in NAEP and NAGB." We wholeheartedly agree.

It is premature to act on this legislation. Testing language, negotiated by Chairman Goodling in the FY 1998 Labor, HHS, and Education Appropriations bill, is very clear. It prohibits the use of 1998 fiscal year funds to field test, administer, distribute or implement any national test. Further, it transfers oversight for testing from the Department of Education to the National Assessment Governing Board (NAGB), an independent, 26-member Board which is composed of state, local, and federal officials, educators business representatives, and members of the public.

We note that there is bipartisan concern about the passage of H.R. 2846. Secretary Riley respectfully requested the Committee delay action on the bill, urging Chairman Goodling to choose bipartisanship and consensus over politics (letter attached). During the Committee's markup of the bill, Representative Castle expressed his serious reservations about the bill:

"First, I really do not think this legislation is necessary right now. We still have before us the reauthorization of NAGB and the National Assessment of Education Progress, NAEP, that would provide a better vehicle for this discussion. The legislation before us does not give Congress a chance to consider the studies on national tests which were a key part of the hard fought compromise by the chairman * * * in essence, this bill muddies the waters of compromise and negotiations * * *. (Representative Castle, at the January 28, 1998, markup of H.R. 2846)."

In fact, the appropriations bill called for three separate studies to be completed by the National Academy of Sciences. These studies will examine (1) the feasibility of linking pupil scores on existing state and commercial tests to each other and to National Assessment of Education Progress (NAEP)[1] results; (2) the technical quality of test items developed for the national tests, including their reliability, validity, and freedom from racial, cultural, or gender bias; and (3) safeguards and appropriate uses of pupil scores.

We should act to resolve the national testing issue with the benefit of these important studies, in a measured, deliberate, bipartisan way during the reauthorization of NAEP and NAGB. Taking up H.R. 2846 now only diverts attention away from a number of other

[1] NAEP—is mandated by Congress to survey the educational accomplishments of U.S. students and to monitor changes in those accomplishments. Often referred to as the Nation's Report Card, NAEP tracks the educational achievement of 4th, 8th, and 12th-grade students over time in selected content areas, which includes reading, math, writing, science, U.S. History, geography, and civics. For over 27 years, NAEP has been collecting data with the aim of providing accurate and useful information to educators, policymakers, and the public. Since 1990 NAEP has collected student achievement data at the state level. Participation in NAEP is voluntary.

education priorities that require prompt Committee action. We should be taking action to repair our nation's crumbling and overcrowded schools. We should be moving legislation to support locally-driven public school renewal so that all our children can become high achievers. And we should immediately begin consideration of President Clinton's proposals to reduce class size, strengthen after school programs, and improve teacher training.

U.S. DEPARTMENT OF EDUCATION,
Washington, DC, January 20, 1998.

Hon. WILLIAM GOODLING,
Chairman, House Committee on Education and the Workforce, House of Representatives, Washington, DC.

DEAR BILL: I have recently learned of your plan to hold a mark-up of legislation relating to the President's proposed voluntary national tests on January 28. I am writing to encourage you to reconsider this plan.

Last fall, you worked directly with White House officials and the President and with members of Congress in both parties to reach a bipartisan agreement on how to proceed with regard to the proposed national tests. The agreement called for a series of studies to be conducted by the National Academy of Sciences that would help inform future actions by the Congress and the Administration on this issue. The deadlines for the studies were carefully established in order to provide the Congress and the Administration the benefit of the additional information and analyses before Congress took up this matter again.

Since that time, the Administration has transferred relevant responsibilities to the National Assessment Governing Board (NAGB), and the studies and reports called for in the agreement are under way. The outcome of those studies will be very important to future discussions and, I am sure, to the work of NAGB in this regard.

I strongly believe that the agreement, which was developed as a result of your efforts, should be fully implemented and that any votes taken before then would prejudge the findings from the studies. I can assure that the Administration and NAGB are operating within the parameters of that agreement. In the same spirit, I would hope that your Committee would withhold further action in this reagrd at this point in time.

Yours sincerely,

RICHARD W. RILEY, *Secretary.*

NATIONAL ASSESSMENT GOVERNING BOARD,
Washington, DC, January 30, 1998.

Hon. WILLIAM L. CLAY,
Ranking Minority Member, Committee on Education and the Work Force, House of Representatives, Washington, DC.

DEAR MR. CLAY: This is in response to your request for information about the National Assessment Governing Board's decisions and plans with respect to voluntary national tests.

Public Law 105–78 (the Act) vests in the Governing Board "exclusive authority over all policies, direction, and guidelines for de-

veloping voluntary national tests pursuant to contract RJ97153001 * * * " The Act requires the Governing Board to review the contract and modify it " as the Board determines necessary and not inconsistent with [the provisions of P.L. 105–78]" or, if it cannot be so modified, terminate the contract and negotiate a new one. The Act provides that the review and modifications be completed by February 11, 1998.

On January 22, the Governing Board deliberated on the recommendations of its Special Committee to Review the Test Development Contract. As a result, the Governing Board approved a detailed set of changes to the contract and, on January 23, delivered those changes to the test development contractor, American Institutes for Research. The contractor's response is due on January 30 and all actions by the Governing Board on the disposition of the contract are planned for completion by February 11, as required by the Act.

As you will see in the highlights of our changes to the contract (below), we do not presume that test development will continue beyond September 30. That is why we changed the contract performance periods to end on September 30 and why we specified in the contract that pilot and field testing may not be conducted with FY 1998 funds.

We are aware that the Committee on Education and the Workforce plans to take up reauthorization of the National Assessment of Educational Progress and the Governing board this year and that the future of voluntary national test is anticipated to be deliberated at that time. Also we understand that the deliberations will be informed by the results of three congressionally mandated National Academy of Science studies. Our plans are based on the expectation that we will receive timely guidance through the congressional authorization process. We have taken steps, including changing the timing of the contract to coincide with reauthorization and the Fiscal Year to ensure that we are positioned to act in accordance with that guidance.

While we intend to follow the dictates of Congress, for our planning purposes we cannot presume that test development will stop on September 30, just as we have not presumed that it will go forward. We have included in the contract, planning activities that are essential components of test development. For example, although pilot testing and field testing will *not* occur during FY 1998, we have asked the contractor to provide a detailed description of its plan for sampling and data analysis for the pilot and field tests. This plan will be reviewed by the Governing Board for technical quality and revised as directed by the Board. However, pilot testing and field testing will not be implemented until we have clear guidance from Congress. Thus, we will be in a position to continue to discontinue test development work, as Congress indicates appropriate.

We have enclosed a copy of the contract revisions. This 34-page document has many detailed, specific changes. These include:

Changing the contract performance periods to end on September 30 rather than August 15;

Specifying that no FY 1998 funds may be used to pilot test, field test, implement, administer, or distribute in any way, any

national tests, except the National Assessment of Educational Progress and the third International Mathematics and Science Study, as provided by the Act;

Setting the schedule so that test questions are written during 1998, pilot testing (if the Congress indicates we are to continue test development) is moved from October 1998 to March 1999, field testing is moved from March 1999 to March 2000, and the first testing of students in 4th grade reading and 8th grade mathematics is moved from March 2000 to March 2001.

Adding provisions regarding the four determinations the Governing Board is to make under the Act with respect to: test bias; testing in the form most likely to yield accurate information; meeting the needs of disadvantaged, limited English proficient, and disabled students; and how parents, guardians and students will be informed about testing content, purpose, and uses;

Removing activities that are beyond the scope of test development.

Again, these changes are consistent with the Act and intended to meet its letter and spirit.

Thank you for your request. Please feel free to contact me if you have any additional questions.

Sincerely,

ROY TRUBY, *Executive Director.*

BILL CLAY.
DALE E. KILDEE.
MAJOR R. OWENS.
LYNN C. WOOLSEY.
CHAKA FATTAH.
CAROLYN MCCARTHY.
RON KIND.
HAROLD E. FORD, JR.
GEORGE MILLER.
MATTHEW G. MARTINEZ.
DONALD M. PAYNE.
ROBERT E. ANDREWS.
BOBBY SCOTT.
CARLOS ROMERO-BARCELÓ.
RUBÉN HINOJOSA.
JOHN F. TIERNEY.
LORETTA SANCHEZ.
DENNIS J. KUCINICH.